

AMENDED IN SENATE JUNE 18, 2014

AMENDED IN ASSEMBLY APRIL 29, 2014

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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1883

Introduced by Assembly Member Skinner
(Coauthors: Assembly Members Ammiano, Buchanan, Chesbro,
Garcia, Gordon, and Ting)

February 19, 2014

An act to amend ~~Section~~ Sections 5898.12, 5898.24, 5898.28, 5898.30, and 5899.2 of, and to add Sections 5898.16 and 5898.33 to, the Streets and Highways Code, relating to public improvements.

LEGISLATIVE COUNSEL'S DIGEST

AB 1883, as amended, Skinner. Public improvements: contractual assessments.

Existing law, the Improvement Act of 1911 (Improvement Act), authorizes the legislative body of any public agency, as defined, to determine that it would be convenient, advantageous, and in the public interest to designate an area within the public agency, as specified, within which authorized public agency officials and property owners may enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property, as specified.

Under existing law, for the purpose of financing the installation of distributed generation renewable energy sources pursuant to the Improvement Act, "permanently fixed" includes, but is not limited to,

systems attached to a residential, commercial, industrial, agricultural, or other real property pursuant to a power purchase agreement or lease between the owner of the system and the owner of the assessed property, if the power purchase agreement or lease contains certain provisions, including, but not limited to, provisions intended to ensure that the property owner is guaranteed the electric power from the system for the length of the lien. One of the required provisions is that after installation, the power purchase agreement or lease is paid in full using the funds from the contractual assessment program.

The Mello-Roos Community Facilities Act of 1982 (Mello-Roos Act) authorizes the establishment of community facilities districts and the issuance of bonds and the levying of special taxes to finance various types of facilities and services within the district.

This bill would revise the information included in the purchase power agreement or lease to allow a system owner to include a specified covenant and warranty in its contract with the property owner, providing that the system will not be removed for the term of the contract. The bill would specifically authorize either full or partial payment for the power purchase agreement or lease to be made after installation of the system.

This bill would make various changes to the Improvement Act to achieve cost reductions and to achieve consistency with similar provisions of the Mello-Roos Act, including changes in recordation requirements and authorizing the financing of facilities in connection with the initial construction of a residential building that is being undertaken by the intended owner or occupant.

This bill would authorize a public agency to transfer, as defined, its right, title, and interest in any voluntary contractual assessments if bonds have not been issued in that regard, subject to an agreement identifying the specific period of time during which the transfer will be operative, not to exceed 3 years. The bill would state that this authorization shall not be construed to authorize the transferee to initiate and prosecute a foreclosure action resulting from a delinquency in the payment of the voluntary contractual assessment, and that a foreclosure action remains the responsibility of the public agency which would retain the sole right to enforce its senior lien status.

This bill would revise various procedures pursuant to which a public agency is authorized to issue bonds under the Improvement Act, including authorizing the public agency to issue new bonds to refinance outstanding bonds payable from contractual assessments levied pursuant

to the act, which may be subject to a variable interest rate, under certain circumstances. The bill would authorize a public agency owning property to levy a contractual assessment under the act against a leasehold or possessory interest in that property, as prescribed.

~~Existing law, under the Improvement Act of 1911, authorizes the legislative body of a public agency to designate an area within which the public agency and property owners may enter into voluntary contractual assessments to finance certain public improvements. Existing law authorizes the public agency to advance its own funds to finance work to be repaid through the voluntary assessments, and to issue bonds in that regard. Existing law provides that assessments levied in this manner constitute a lien against the property on which the assessments are made, and, in the case of delinquency, provides for collection of assessments and associated interest and penalties, as specified.~~

~~This bill would authorize a public agency to transfer, as defined, its right, title, and interest in any voluntary contractual assessments if bonds have not been issued in that regard, subject to an agreement identifying the specific period of time during which the transfer will be operative, not to exceed 3 years. The bill would not authorize the transferee to initiate and prosecute a foreclosure action resulting from a delinquency in the payment of the voluntary contractual assessment. The foreclosure action would remain the responsibility of the public agency, which would retain the sole right to enforce its senior lien status.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Energy efficiency, renewable energy, and water efficiency
- 4 upgrades to residential, commercial, industrial, and other properties
- 5 are integral to furthering the state's goals of reducing greenhouse
- 6 gas emissions, insulating the state from the impacts of dwindling
- 7 water resources, and helping Californians save money.
- 8 (b) Not-for-profit entities and other third parties are increasingly
- 9 important partners with local governments in funding Property
- 10 Assessed Clean Energy (PACE) upgrades.
- 11 (c) The closing costs associated with bond issuance can make
- 12 PACE financing for small projects cost-prohibitive.

(d) By pooling small to medium size PACE projects into one bond, the closing costs for each project can be drastically reduced.

(e) In order for a third party to pool projects, it is necessary to enable local governments to assign the revenue from a PACE assessment to an investor prior to the issuance of a bond.

(f) The right to foreclose on delinquent voluntary assessments, and the senior lien status of those assessments, should remain with the local government.

SEC. 2. Section 5898.12 of the Streets and Highways Code is amended to read:

5898.12. (a) It is the intent of the Legislature that this chapter should be used to finance public improvements to lots or parcels ~~which~~ *that* are developed and where the costs and time delays involved in creating an assessment district pursuant to other provisions of this division or any other law would be prohibitively large relative to the cost of the public improvements to be financed.

(b) It is also the intent of the Legislature that this chapter should be used to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, industrial, agricultural, or other real property.

(c) It is also the intent of the Legislature to address chronic water needs throughout California by permitting voluntary individual efforts to improve water efficiency. The Legislature further intends that this chapter should be used to finance the installation of water efficiency improvements that are permanently fixed to residential, commercial, industrial, agricultural, or other real property, including, but not limited to, recycled water connections, synthetic turf, cisterns for stormwater recovery, and permeable pavement.

(d) It is also the intent of the Legislature that a public agency in the process of establishing an assessment program, to the extent feasible, use a good faith effort to provide advance notice of the proposed program to water and electric service providers in the relevant service area, as set forth in Section 5898.24, to allow the most efficient coordination and collaboration between the public agency and water and electric service providers.

(e) This chapter shall not be used to finance facilities for parcels ~~which are undergoing development.~~ *in connection with the initial*

1 *construction of a residential building, unless the initial construction*
2 *is undertaken by the intended owner or occupant.*

3 (f) This chapter shall not be used to finance the purchase or
4 installation of appliances that are not permanently fixed to
5 residential, commercial, industrial, agricultural, or other real
6 property.

7 (g) Assessments may be levied pursuant to this chapter only
8 with the free and willing consent of the owner of each lot or parcel
9 on which an assessment is levied at the time the assessment is
10 levied.

11 *SEC. 3. Section 5898.16 is added to the Streets and Highways*
12 *Code, to read:*

13 *5898.16. All references to financing in this chapter shall be*
14 *deemed to also refer to refinancing, except that with respect to*
15 *refinancing, the legislative body shall conclude that providing the*
16 *refinancing will result in an increased adoption of the*
17 *improvements authorized to be financed by this chapter. This*
18 *section does not constitute a change in, but is declaratory and a*
19 *clarification of existing law.*

20 *SEC. 4. Section 5898.24 of the Streets and Highways Code is*
21 *amended to read:*

22 5898.24. (a) A legislative body shall publish notice of a hearing
23 pursuant to Section 6066 of the Government Code, and the first
24 publication shall occur not later than 20 days before the date of
25 the hearing.

26 (b) A legislative body shall provide written notice of a proposed
27 contractual assessment program to all water or electric providers
28 within the boundaries of the area within which voluntary
29 contractual assessments may be entered into not less than 60 days
30 prior to adoption of any resolution pursuant to Section 5898.26.

31 (c) (1) A legislative body administering a voluntary contractual
32 assessment program shall designate an office, department, or
33 bureau of the local agency that shall be responsible for annually
34 preparing the current roll of assessment obligations by assessor's
35 parcel number on property subject to a voluntary contractual
36 assessment.

37 (2) The designated office, department, or bureau shall establish
38 procedures to promptly respond to inquiries concerning current
39 and future estimated liability for a voluntary contractual
40 assessment. Neither the designated office, department, or bureau,

1 nor the legislative body, shall be liable if any estimate of future
2 voluntary contractual assessment liability is inaccurate, nor for
3 any failure of any seller to request notice pursuant to this chapter
4 or to provide the notice to a buyer.

5 (d) For purposes of enabling sellers of real property subject to
6 a voluntary contractual assessment to satisfy the notice
7 requirements of Section 1102.6b of the Civil Code, the legislative
8 body shall cause to be recorded in the office of the county recorder
9 for the county in which the real property is located, concurrently
10 with the instrument creating the voluntary contractual assessment,

11 a separate document that meets all of the following requirements:
12 (1) The title of the document shall be “Payment of Contractual
13 Assessment Required” in at least 14-point boldface type.

14 (2) The document shall include all of the following information:

15 (A) The names of all current owners of the real property subject
16 to the contractual assessment, ~~assessment and the legal description~~
17 ~~and the assessor’s parcel number for the affected real property.~~
18 *property, or the legal description if there is no assessor’s parcel*
19 *number.*

20 (B) The annual amount of the contractual assessment.

21 (C) The date or circumstances under which the contractual
22 assessment expires, or a statement that the assessment is perpetual.

23 (D) The purpose for which the funds from the contractual
24 assessment will be used.

25 (E) The entity to which funds from the contractual assessment
26 will be paid and specific contact information for that entity.

27 (F) The signature of the authorized representative of the
28 legislative body to which funds from the contractual assessment
29 will be paid.

30 (e) The recorder shall only be responsible for examining the
31 document required by subdivision (d) and determining that it
32 contains the information required by subparagraphs (A), (E), and
33 (F) of paragraph (2) of subdivision (d). The recorder shall index
34 the document under the names of the persons and entities identified
35 in subparagraphs (A) and (E) of paragraph (2) of subdivision (d).
36 The recorder shall not examine any other information contained
37 in the document required by subdivision (d).

38 (f) *In order to reduce the costs associated with contractual*
39 *assessments, a legislative body may authorize the document*

1 *described in subdivision (d) to be combined with the notice*
2 *required by Section 5898.32, and recorded as a single document.*

3 ~~SEC. 2.~~

4 SEC. 5. Section 5898.28 of the Streets and Highways Code is
5 amended to read:

6 5898.28. (a) A public agency may issue bonds pursuant to this
7 chapter, the principal and interest for which would be repaid by
8 voluntary contractual assessments. A public agency may advance
9 its own funds to finance work to be repaid through voluntary
10 contractual assessments, and may from time to time sell bonds to
11 reimburse itself for those advances. A public agency may enter
12 into a relationship with an underwriter or financial institution that
13 would allow the sequential issuance of a series of bonds, each bond
14 being issued as the need arose to finance work to be repaid through
15 voluntary contractual assessments. The interest rate of each bond
16 may be determined by an appropriate index, but shall be fixed at
17 the time each bond is issued *if the bond is issued to finance*
18 *improvements to residential property with three or fewer units.*
19 Bond proceeds may be used to establish a reserve fund *for debt*
20 *service or paying the costs of foreclosure on properties*
21 *participating in the program, to fund capitalized interest for a*
22 *period up to two years from the date of issuance of the bonds, to*
23 *fund the administrative fee required for participation in the PACE*
24 *Reserve Program established pursuant to Chapter 4 (commencing*
25 *with Section 26050) of Division 16 of the Public Resources Code,*
26 and to pay for expenses incidental to the issuance and sale of the
27 bonds. Division 10 (commencing with Section 8500) shall apply
28 to any bonds issued pursuant to this section, insofar as that division
29 is not in conflict with this chapter.

30 (b) (1) Notwithstanding any provision of this division or the
31 Improvement Act of 1915 (Division 10 (commencing with Section
32 8500)), a public agency may transfer its right, title, and interest in
33 and to any voluntary contractual assessments, if bonds have not
34 been issued pursuant to subdivision (a). The public agency and
35 the transferee shall enter into an agreement that, among other
36 things, identifies the specific period of time during which the
37 transfer of voluntary contractual assessments will be operative,
38 not to exceed three years. Except as provided in paragraph (2), a
39 transfer of any voluntary contractual assessments under this
40 subdivision shall be treated as a true and absolute transfer of the

1 asset so transferred for the period of the transfer and not as a pledge
2 or grant of a security interest by the public agency for any
3 borrowing. The characterization of the transfer of any of those
4 assets as an absolute transfer by the public agency shall not be
5 negated or adversely affected by the fact that only a portion of any
6 voluntary contractual assessment is transferred, nor by any
7 characterization of the transferee for purposes of accounting,
8 taxation, or securities regulation, nor by any other factor
9 whatsoever. As used in this section, “transfer” means sale,
10 assignment, or other transfer.

11 (2) Nothing in this subdivision shall be construed to authorize
12 the transferee to initiate and prosecute a foreclosure action resulting
13 from a delinquency in the payment of the voluntary contractual
14 assessment. Initiation and prosecution of a foreclosure action shall
15 remain the responsibility of the public agency, which shall retain
16 the sole right to enforce its senior lien status.

17 (c) *Division 10 (commencing with Section 8500) shall apply to*
18 *any bonds issued pursuant to this section, insofar as that division*
19 *is not in conflict with this chapter. Notwithstanding Part 16*
20 *(commencing with Section 8880) of Division 10, if any reserve*
21 *fund is established in whole or in part with legally available*
22 *moneys of one or more public agencies other than bond proceeds,*
23 *the public agency or agencies may provide that a property owner*
24 *who prepays all or a portion of the assessment shall not be credited*
25 *with the public agency moneys in the reserve fund and there shall*
26 *be no reduction in the assessment pursuant to Sections 8884 or*
27 *8881, and the public agency moneys in the reserve account shall*
28 *not be used to redeem bonds pursuant to Section 8885 and any*
29 *public agency moneys remaining in the reserve fund at the maturity*
30 *of the bonds shall be disbursed to the public agency free and clear*
31 *of the lien of the issuing instrument. Any excess bond proceeds*
32 *may be used to pay principal of and interest on the bonds in*
33 *addition to any other use permitted by Division 10 (commencing*
34 *with Section 8500).*

35 (d) *Notwithstanding any other law, the public agency may*
36 *conclude that it is in the public interest for bonds issued by the*
37 *public agency pursuant to this chapter to not be subject to*
38 *redemption prior to their scheduled maturity date except as a result*
39 *of the prepayment in whole or in part of contractual assessments.*
40 *Notwithstanding any other limitations set forth in law, and with*

1 *respect to bonds issued to finance improvements to nonresidential*
2 *property or residential property with four or more units, the*
3 *redemption premium associated with a redemption of bonds as a*
4 *result of a contractual assessment prepayment shall be determined*
5 *by agreement of the public agency issuing the bonds, the property*
6 *owner and the initial purchaser of the bonds.*

7 *(e) (1) Without the prior written approval of the property owner,*
8 *and notwithstanding any other law, a public agency may issue*
9 *bonds pursuant to this chapter to refinance outstanding bonds*
10 *payable from contractual assessments levied pursuant to this*
11 *chapter if all of the following are true:*

12 *(A) The total interest cost to maturity on the refunding bonds*
13 *is less than the total interest cost to maturity on the bonds to be*
14 *refunded.*

15 *(B) The final maturity date of the refunding bonds is not later*
16 *than the final maturity date of the refunded bonds, except that if*
17 *the bonds to be refunded are variable rate bonds, the final maturity*
18 *date of the refunding bonds may extend to, but not beyond, the*
19 *useful life of the financed improvements.*

20 *(C) The total interest component of the scheduled contractual*
21 *assessment installments to maturity, after issuance of the refunding*
22 *bonds, is less than the total interest component of the scheduled*
23 *contractual assessment installments to maturity prior to issuance*
24 *of the refunding bonds.*

25 *(2) For purposes of this section, in connection with the issuance*
26 *of fixed rate bonds to refinance variable rate bonds, the interest*
27 *rate on the refunded bonds for purpose of demonstrating*
28 *compliance with this section may be assumed to be the maximum*
29 *possible interest rate on the bonds to be refunded as long as the*
30 *legislative body concludes that the public interest will be served*
31 *by issuing fixed rate bonds to refinance the outstanding variable*
32 *rate bonds. In connection with an issuance of refunding bonds*
33 *under this chapter, the legislative body may direct that an*
34 *amendment to the document required by subdivision (d) of Section*
35 *5898.24 be recorded to reflect the revised contractual assessment*
36 *installment schedule.*

37 *(f) With the prior written approval of the property owner, and*
38 *notwithstanding any other law, a public agency may issue bonds*
39 *pursuant to this chapter to refinance outstanding bonds payable*
40 *from contractual assessments levied pursuant to this chapter*

1 *without complying with subdivision (f). The final maturity date of*
2 *the refunding bonds issued pursuant to this subdivision may be*
3 *later than the final maturity date of the bonds being refunded as*
4 *long as the final maturity date of the refunding bonds does not*
5 *extend beyond the useful life of the financed improvements.*

6 SEC. 6. *Section 5898.30 of the Streets and Highways Code is*
7 *amended to read:*

8 5898.30. Assessments levied pursuant to this chapter, and the
9 interest and any penalties thereon shall constitute a lien against
10 the lots and parcels of land on which they are made, until they are
11 paid. Division 10 (commencing with Section 8500), insofar as
12 those provisions are not in conflict with ~~the provisions of this~~
13 chapter, Article 13 (commencing with Section 53930) of, and
14 Article 13.5 (commencing with Section 53938) of, Chapter 4 of
15 Part 1 of Division 2 of Title 5 of the Government Code apply to
16 the imposition and collection of assessments contracted for
17 pursuant to this chapter, including, but not limited to, provisions
18 related to lien priority, the collection of assessments in the same
19 manner and at the same time as the general taxes of the city or
20 county on real property, *unless another procedure has been*
21 *authorized by the legislative body or by statute*, and any penalties
22 and remedies in the event of delinquency and default.

23 SEC. 7. *Section 5898.33 is added to the Streets and Highways*
24 *Code, to read:*

25 5898.33. (a) *If a public agency owning property, including*
26 *property held in trust for any beneficiary, grants a leasehold or*
27 *other possessory interest in the property, the contractual*
28 *assessment may be levied on the leasehold or possessory interest*
29 *and shall be payable by the owner of the leasehold or possessory*
30 *interest. The assessment contract shall be entered into by the public*
31 *agency that established the program and the lessee, and the public*
32 *agency owning the property shall provide prior written consent*
33 *to the contractual assessment.*

34 (b) *At the time the assessment contract is executed, the term of*
35 *the leasehold interest shall be at least as long as the term of the*
36 *assessment contract.*

37 (c) *If the contractual assessment on any possessory interest*
38 *levied pursuant to subdivision (a) is unpaid when due, the tax*
39 *collector may use those collection procedures that are available*
40 *for the collection of assessments on the unsecured roll.*

1 SEC. 8. *Section 5899.2 of the Streets and Highways Code is*
2 *amended to read:*

3 5899.2. For the purpose of financing the installation of
4 distributed generation renewable energy sources pursuant to this
5 chapter, “permanently fixed” includes, but is not limited to, systems
6 attached to a residential, commercial, industrial, agricultural, or
7 other real property pursuant to a power purchase agreement or
8 lease between the owner of the system and the owner of the
9 assessed property, if the power purchase agreement or lease
10 contains all of the following provisions:

11 (a) The attached system is an eligible renewable energy resource
12 pursuant to the California Renewables Portfolio Standard Program
13 (Article 16 (commencing with Section 399.11) of Chapter 2.3 of
14 Part 1 of Division 1 of the Public Utilities Code).

15 (b) The term of the power purchase agreement or lease is at
16 least as long as the term of the related assessment contract.

17 (c) The owner of the attached system agrees to install, maintain,
18 and monitor the system for the entire term of the power purchase
19 agreement or lease.

20 (d) The owner of the attached system is not permitted to remove
21 the system prior to completion of the term of the contractual
22 assessment lien.

23 (e) After installation, the power purchase agreement or lease is
24 ~~paid paid, either partially or in full~~ full, using the funds from the
25 contractual assessment program.

26 (f) The right to receive the electricity from the system, through
27 a power purchase agreement or lease or the right to the system
28 itself, is tied to the ownership of the assessed real property and is
29 required to be automatically transferred with the title to the real
30 property whether the title is transferred by voluntary sale, judicial
31 or nonjudicial foreclosure, or by any other means.

32 (g) The power purchase agreement or lease identifies the public
33 agency that is a party to the assessment contract on the real property
34 as a third-party beneficiary of the power purchase agreement or
35 lease until the assessment lien on the property has been fully paid
36 and, only until that time, prohibits amendments to the power
37 purchase agreement or lease without the consent of the public
38 agency.

39 (h) ~~Each of the following provisions, in~~ In order to ensure that
40 the property owner is guaranteed the electric power from the system

1 for the length of the ~~lien~~ lien, the system shall not be removed if
2 the owner of the attached system is not performing its obligations
3 under the contract, and one of the following is true:
4 (1) The owner of the attached system does both of the following:
5 ~~(1) The system cannot be removed if~~
6 (A) Covenants in its contract with the property owner that
7 neither the owner of the attached system ~~is not performing its~~
8 ~~obligations under~~ nor any successor in interest will remove or
9 permanently decommission the attached system during the term
10 of the contract.
11 (B) Warrants in the contract with the property owner that no
12 assignee, creditor, partner, or owner of the attached system's
13 owner has, as of the date of the contract or during the remaining
14 term of the contract, the right to remove or permanently
15 decommission the attached system.
16 (2) The owner of the attached system must be a bankruptcy
17 remote special purpose entity that is bankruptcy remote and meets
18 all of the following conditions:
19 (A) It does not engage in any business other than owning the
20 attached systems and entering into electricity contracts with the
21 homeowner.
22 (B) It has no material debt.
23 (C) Its contracts are either entered into with unrelated third
24 parties or have terms negotiated at arms length.